TERMS OF REFERENCE (ToR)

Alignment assessment of industry programmes with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

September 2015 (revised 25 Sept)

BACKGROUND

After more than three years of implementation of the OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas[1] (hereafter the OECD Due Diligence Guidance), significant progress has been made:

- Multiple industry programmes have been adopted, using the OECD Due Diligence Guidance as a benchmark, among others, the Conflict Free Smelter Initiative (CFSI), ITRI Tin Supply Chain Initiative (iTSCi), London Bullion Market Association (LBMA), Responsible Jewellery Council (RJC), Dubai Multi Commodities Centre (DMCC), Fairmined, Fairtrade as well as new programmes emerging from the China Chamber of Commerce for Metals, Minerals and Chemicals Importers & Exporters (CCCMC).
- Increased coverage and roll-out of global tin, tungsten, tantalum (3T) and gold smelter/refiner audits:
  - 92% of tin produced in the Great Lakes region in 2014 was covered by iTSCi;
  - 45 of 46 global tantalum smelters are covered by the CFSI, 23 of 43 tungsten smelters and 58 of 80 tin smelters (as of March 2015);
  - 40% of gold refiners worldwide are covered by industry audit programmes covering more than 85% of gold refined annually.
- Existing audit programmes are increasingly collaborating and developing mutual recognition agreements horizontally (i.e. mutual recognition at smelter level, such as the CFSI/LBMA/RJC agreements and the RJC/DMCC agreement) and vertically (i.e. upstream and downstream recognition, such as the iTSCi/CFSI agreement and the CFSI/International Conference on the Great Lakes Region (ICGLR) agreement).

Three years down the line, it is now time to take stock of progress and focus on measures that can enhance coherence, effectiveness and credibility of the existing initiatives developed to operationalise the OECD Due Diligence Guidance, as well as addressing the persisting challenges that stakeholders are facing when implementing due diligence on the ground:

- The UN Group of Experts on the DRC, civil society and the media have continuously highlighted areas of risk where schemes may be strengthened and better aligned with international standards.
- Lacks of coverage and misunderstanding on approaches to artisanal gold production have yielded little progress in this area, as opposed to the 3T sector.
- Discussions with refiners and smelters about auditors not applying standards consistently have demonstrated the need for further training, capacity building and outreach in this area.
- The emergence of additional audit programs and systems, such as the DMCC programme or the developing CCCMC project, show the need for global coherence of auditing schemes to avoid

[1] http://mneguidelines.oecd.org/

creating confusion, duplicating efforts for companies that are subject to the audits, and ensure these new systems are credible and meet international standards.
- The development of the European Union draft regulation on responsible sourcing of minerals also provides a timely opportunity for all relevant stakeholders to take stock of and possibly bring adjustments to existing industry association programmes to better align with international expectations, the OECD Due Diligence Guidance and emerging regulations.

OBJECTIVES AND CRITERIA

The objective of this project is to assess:
1. The alignment of **industry programmes' standards and systems** with the OECD Due Diligence Guidance; and
2. The alignment of the **industry programmes' implementation efforts** with the OECD Due Diligence Guidance.

It should be noted that the 'harmonization' between industry programmes, particularly relating to audits, presents a sizeable piece of work in itself and should hence not be central to the first phase of this project. A brief case study on the harmonisation work between iTSCi and CFSI is envisaged to draw out lessons-learnt.

The **initiatives that will initially be assessed** are: CFSI, DMCC, iTSCi, LBMA and RJC

The following **assessment criteria** are proposed:

Alignment with the OECD Due Diligence Guidance – standards and systems:
- *Risk-based approach and other core due diligence principles* (individual responsibility of companies for due diligence, good faith and reasonable efforts, progressive and constructive approaches)
- *Alignment with Annex II risks per the OECD Due Diligence Guidance*
- *Geographic coverage* in relation to minerals potentially from conflict-affected and high-risk areas
- *Alignment of audit standard criteria and process*: conformity of smelter/refiners' due diligence with 5-steps due diligence framework of the OECD Due Diligence Guidance
- *Audit scope, principles, activities alignment* (i.e. Step 4(A) alignment)

Implementation efforts, including implementation of above standards:
- *Responsiveness of the programme to risks identified* and/or flagged through monitoring, whistle-blowing or grievance mechanisms
- *Stakeholder engagement and risk identification, assessment and management* as per the OECD Due Diligence Guidance
- *Timely and comprehensive reporting by member companies and industry programmes under Step 5*, including publishing summary reports of audits (with due regard taken of business confidentiality and other competitive concerns) and whether audits include assessment of step 5 reporting.
- *Independence of auditors, auditor accreditation and auditor training*, including (a) fostering common auditor interpretations of the OECD Due Diligence Guidance, and (b) improved auditor understanding of the business/sector

It should be noted that some components will be assessed both in terms of standards and systems and implementation. One example is the area of audit principles (Step 4 of the OECD Due Diligence Guidance and detailed in the supplements under Step 4.3). These will be assessed in terms of how they are set out in the programmes' standards and systems as well as how they are implemented in practice. An example here would be to look at how the CFSI programme's audit principles are described in theory and how auditors are in practice assessed, chosen and monitored.

Analysis of issues that go beyond the OECD Due Diligence Guidance and will hence not affect judgement on conformity:

- *Governance of the programme and stakeholder involvement*
- *Engagement in conflict-affected and high-risk areas*: incentives v. disincentives
- *Cultivating respect among participating companies for core due diligence principles*, including the balance of individual company due diligence responsibilities versus effective collaborative efforts, the use of a risk-based approach
- *Outreach* using collaborative leverage to get more companies, particularly smelters/refiners involved
- *Adaptability of the programme* to the operating environment, including new regulatory developments and emerging expectations

TIMELINE AND PROCESS

Oct 2015:

- Consultant/s and OECD Secretariat develop methodology with input from the AG
- Presentation of the final methodology to OECD

Nov 2015 – March 2016

- Consultant/s carries out research and writes up report
- Discussion of first draft and recommendations with OECD and AG

April – June 2016:

- Programmes have three months to comment on recommendations and adjust, as appropriate
- Final report updated in light of changes made or comments by programmes and published

ASSESSMENT

The work, carried out by a consultant/s and supported heavily by the OECD Secretariat, will consist of document reviews, interviews with programmes, accredited auditors, member companies, audited smelters/refiners and other experts and stakeholders. More specifically:

Phase 1: Development of the assessment methodology

This phase will see the consultant/s work closely with the OECD Secretariat to develop a sound assessment methodology that will be apt to evaluate the alignment of the different initiatives with the OECD Due Diligence Guidance. The methodology has to hence recognize differences between the programmes - including between the objectives of the programmes – while at the same time allowing for comparisons across the assessment criteria.

This first phase will encompass the drawing up of a glossary of terms that will be central to the assessment, including terms such as conformance, compliance, guidance, recommendations etc.

The methodology will be presented to the AG for comment and review and input before the actual assessment work will commence.

Phase 2: Assessment work

This phase will see the implementation of the developed methodology, divided in two sub-phases:

<u>Alignment assessment:</u>

The consultant/s will start by interviewing representatives from the assessed initiatives and requesting full access to documentation and procedures. He/she will then carry out desktop work to review documents and procedures of the initiatives and assess them in line with the developed methodology. Once the consultant/s has a thorough understanding of the standards and systems of the initiatives, he/she will present preliminary findings to the OECD Secretariat and the AG and report on whether the developed methodology works in practice.

The consultant/s will then proceed to carry out a series of visits for more in-depth research and to assess the implementation of the programmes. Ideally, some of those visits coincide with ongoing audit activities by the programmes that are being assessed to allow the consultant/s to observe how the audits are carried out. If that is not possible, the consultant/s should interview auditors of the programmes outside of an ongoing audit. The OECD Secretariat proposes to include approximately five research trips, including:

- US (CFSI/P, smelters/refiners, downstream)
- London (iTSCi, RJC and LBMA)
- Dubai (DMCC, smelters/refiners)
- China (smelters/refiners)
- Africa's Great Lakes region (on-the-ground implementation, upstream actors)

The consultant/s will finally analyse aspects that go beyond the letter of the OECD Due Diligence Guidance, such as the governance of programmes, as outlined above. The analysis of those aspects will not affect the judgement on the alignment of programmes with the OECD Due Diligence Guidance but is deemed critical for a comprehensive appreciation of the functioning of the programmes.

Upon completion of the two assessment phases, the consultant/s will report back to the OECD Secretariat, before writing the detailed report (this can be done by phone or video conference).

Phase 3: Presentation of findings and recommendations and programme adjustment

This phase will see the consultant/s present the findings of the assessment to the OECD Secretariat and, after a first review by the OECD Secretariat, to the AG. The initiatives then have three months to consider and address the recommendations – as appropriate – before a final report will be published. The final report will include the initial recommendations to the programmes and the responses from programmes; programmes may wish to comment on the recommendation, explaining why they may not wish to implement them or foresee implementation at a later stage (for example if suggested changes incur costs that might not be budgeted for).

DELIVERABLES

The **deliverables** should entail:

- Draft methodology presentation
- Final methodology report
- Detailed report/spreadsheet on standards and systems alignment with the OECD Due Diligence Guidance
- Detailed report/spreadsheet on implementation alignment with the systems
- Overview report analysing the key findings in relation to the two objectives of the study and recommendations for adjustment to programmes
- Presentation on findings for AG and Forum meeting

ESTIMATED DAYS AND BUDGET

The OECD estimates approximately 45 consultant days (desktop and travel days) for this project.

The Consultant/s is expected to submit a budget at proposal stage using the below format (add / delete lines as appropriate). Please note that all costs must be included in the budget as additions cannot included once the contract has been draw up. **Any travel required for this work will be funded separately by the OECD as required and paid according to OECD rules and procedures, and should therefore not be estimated as part of this budget.**

BUDGET: ALIGNMENT ASSESSMENT				
Consultant/s / Activity	**# of days / units**	**Cost of unit, Euros**	**Sub-Total**	**Total EUR**
Fees for intellectual services				
Phase 1: Development of methodology				
Desktop research / report writing				
Presentation				
TOTAL FEES				**XXX EUR**
Phase 2: Assessment				
Desktop research / report writing				
TOTAL FEES				**XXX EUR**
Fieldwork (intellectual services only)				
Trip #1				
Trip #2				
Trip #				
Trip #				
Trip #				
Total fieldwork (intellectual services only)				
GRAND TOTAL				**XXX EUR**

Qualifications:

The OECD Secretariat believes that this assessment be best carried out by a team of consultants that submit one single joint bid and that comprises at least one auditor with experience in supply chain audits. Bids should detail if the consultant/s have carried out previous or ongoing work for the programmes that will be assessed and if this work could present a conflict of interest.

- Track record in developing assessment methodologies and road testing them;
- Knowledge of supply chain due diligence and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;
- Supply chain audit experience, ideally in mineral supply chains;
- Knowledge of mineral supply chain and traceability initiatives and projects in upstream, refiner/smelter level and downstream;
- Ability to manage and mitigate potential risk of conflict of interest (see above relating to previous work carried out for the initiatives that will be assessed).

Main criteria for selection of suppliers are as follows:

40%: Relevant experience in the area of methodology development, due diligence, supply chains, audits and risk assessment
20%: Independence from initiatives that will be assessed / ability to manage potential risk of conflict of interest
20%: Financial Proposal
20%: Capacity to carry out the assignment between Q4 2015 and Q2 2016 (availability)

Bids should include:

1. CVs of consultants
2. Letter of motivation and concept note detailing the approach and steps to implement the Terms of Reference
3. Information on availability
4. Daily fee or monthly fee (based on 21 working days in a month) in EURO
5. A document listing consultant/s qualifications (education, experience, competencies, communication and languages) as requested above and that you attest to have.

Management:
The project will be managed by the OECD Secretariat. Consultant/s is expected to work closely with the OECD Secretariat and update the Secretariat on progress against the scope of work, challenges and preliminary findings.

Intellectual Property:
Any intellectual product that results from this framework contract shall be the property of the OECD.

General terms and conditions:
The “Minimum general conditions for OECD contracts”, available on demand, will constitute the minimum general conditions of the contract to be signed between the OECD and the Contractor to whom this Market consultation would have been awarded.